

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

2005 MAR 16 P 2: 26

C.A. NO 03-12502 RGS  
DISTRICT OF MASS

HARTFORD FIRE INSURANCE COMPANY, )  
Plaintiff )  
vs. )  
EASTERN CONTRACTORS, INC., )  
Defendant/Third Party Plaintiff )  
vs. )  
CITY OF LAWRENCE, CITY OF FALL RIVER )  
and FREETOWN/LAKEVILLE REGIONAL )  
SCHOOL DISTRICT, )  
Third Party Defendants )

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**EASTERN CONTRACTORS, INC.'S REPLY TO COUNTERCLAIM OF  
THIRD PARTY DEFENDANT CITY OF LAWRENCE**

Eastern Contractors, Inc. (hereinafter "Eastern") as Defendant/Third Party Plaintiff asserts its Reply to the Counterclaim asserted by the City of Lawrence as follows:

1. Admitted.
2. Admitted.

COUNT I

3. Eastern repeats and reavers its answers to the allegations contained in paragraphs 1 through 2 as if fully set forth herein.
4. Admitted.
5. Admitted.

6. Denied.

7. Denied.

### COUNT II

8. Eastern repeats and reavers its answers to the allegations contained in paragraphs 1 through 7 as if fully set forth herein.

9. Denied.

10. Denied.

11. Denied.

### AFFIRMATIVE DEFENSES

#### FIRST AFFIRMATIVE DEFENSE

The Counterclaim fails to state a claim upon which relief can be granted and should therefore be dismissed.

#### SECOND AFFIRMATIVE DEFENSE

The Plaintiff-in-Counterclaim has failed to fulfill all conditions precedent to the maintenance of this action, and the Counterclaim should therefore be dismissed.

#### THIRD AFFIRMATIVE DEFENSE

The Plaintiff-in-Counterclaim has breached its contract with Eastern and is barred from any recovery as a consequence of such breach.

#### FOURTH AFFIRMATIVE DEFENSE

The acts and conduct complained of by Plaintiff-in-Counterclaim in the Counterclaim were caused by the acts or omissions of third persons, for whose acts or omissions Eastern is not liable, which acts Eastern had no reason to anticipate, of which

persons Eastern had no knowledge and over whom Eastern did not exercise any measure of control.

FIFTH AFFIRMATIVE DEFENSE

If Eastern ever owed Plaintiff-in-Counterclaim anything, which is denied, Plaintiff-in-Counterclaim has waived such payment.

SIXTH AFFIRMATIVE DEFENSE

The provisions of the Contract upon which Plaintiff-in-Counterclaim bases certain of its claims against Eastern are against public policy, contrary to law, unconscionable and void as a matter of public policy.

SEVENTH AFFIRMATIVE DEFENSE


Plaintiff-in-Counterclaim, by its acts and conduct, is estopped to assert that Eastern now owes Plaintiff-in-Counterclaim anything.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff-in-Counterclaim has failed to complete obligations which has caused and/or will cause Eastern to expend time, labor and materials in completing such work which Eastern is and/or will be entitled to set off from any sums claimed by Plaintiff-in-Counterclaim.

**WHEREFORE,** Eastern demands that the Counterclaim be dismissed, that judgment enter in favor of Eastern and against the City of Lawrence, and for such further relief as the court deems just and proper.

Eastern Contractors, Inc.  
By its attorneys,



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